

PORTSMOUTH, CITY OF
City of First Class.

Incorporation and charter, 1908, c. 157; repealed 1970, c. 471.

Charter, 1970, c. 471.

Amended 1971, c. 55 (§§ 2.07, 2.09, 6.01, 6.06, 6.07)
 1971, c. 56 (§§ 9.02, 9.05)
 1972, c. 260 (§§ 10.01, 10.02, 10.09)
 1973, c. 351 (§§ 3.01, 3.02, 3.03, 3.05, 3.06, 3.08, 9.08)
 1974, c. 256 (§§ 2.06, 2.12, 2.14 [added], 3.02, 3.03, 3.04, 3.11, 5.02,
 6.02, 6.05, 6.07, 8.02, 9.01, 9.02 [repealed], 9.03 [repealed],
 9.05 [repealed], 9.06 [repealed], 9.07 [repealed],
 9.08 [repealed], 10.08, 10.09, 11.01, 11.02, 11.10, 11.12,
 11.13, 11.15)
 1975, c. 278 (§§ 7.03, 11.01, 11.12)
 1976, c. 1 (§§ 3.03, 3.04)
 1977, c. 119 (§§ 2.15 [added], 6.08)
 1980, c. 152 (§5.01)
 1982, c. 377 (§§ 2.02:1 [added], 3.10)
 1983, c. 333 (§ 2.02:1)
 1986, c. 50 (§ 6.07 [repealed])
 1987, c. 119 (§ 6.05 [repealed])
 1993, c. 913, 968 (§§ 2.10, 2.12, 2.13, 3.02, 3.06, 3.10
 [repealed], 4.01, 4.03 [repealed], 6.08 [repealed], 7.01,
 11.02, 11.10)
 1998, c. 138, 344 (§ 2.03).

ARTICLE I
Incorporation and Boundaries

§ 1.01. Incorporation.

The inhabitants of the territory comprised within the limits of the city of Portsmouth, as the same now or may hereafter be established by law, shall continue to be a body politic and corporate under the name of the city of Portsmouth and as such shall have perpetual succession, may sue and be sued, contract and be contracted with and may have a corporate seal which it may alter, renew, or amend at its pleasure. (1970, c. 471)

§ 1.02. Boundaries.

The boundaries of the city shall be as described in Chapter 265, Acts of Assembly, 1858; as modified by Chapter 370, Acts of Assembly, 1894; by an order of the Circuit Court of Norfolk County entered November 21, 1908, in its Common Law Order Book 21, page 467; by an order of the Supreme Court of Appeals confirming an order of the Circuit Court of Norfolk County entered June 26, 1918, which said order of the Supreme Court of Appeals is recorded in the Circuit Court of Norfolk County in Common Law Order Book 27, page 141; by an order of the Circuit Court of the City of Portsmouth entered September 25, 1933, in its Common Law Order Book 4, page 421; by an order of the Supreme Court of Appeals confirming an order of the Circuit Court of

Norfolk County entered September 27, 1946, which said order of the Supreme Court of Appeals is recorded in the Circuit Court of Norfolk County in Common Law Order Book 44, page 583; by an order of the Circuit Court of Norfolk County entered August 20, 1959, in its Common Law Order Book 58, page 185; and by an order of the Circuit Court of the City of Chesapeake entered October 2, 1967, in its Common Law Order Book 66, page 357. (1970, c. 471)

ARTICLE II Powers

§ 2.01. General Grant of Powers.

The powers set forth in §§ 15.1-837 through 15.1-907, inclusive, of Chapter 18 of Title 15.1 of the Code of Virginia, 1950, as in force on July 1, 1964, and all other powers which are now or may be conferred upon or delegated to cities under the constitution and laws of the Commonwealth and all other powers pertinent to the conduct of a city government are hereby specifically conferred upon the city of Portsmouth, and no enumeration of particular powers in this charter shall be held to be exclusive but shall be in addition to the general grant of powers. (1970, c. 471)

§ 2.02. Additional Powers.

In addition to the powers granted by other sections of this charter, the city shall have the power to raise annually by taxes and assessments, as permitted by general law, in the city such sums of money as the council shall deem necessary to pay the debts and defray the expenses of the city, in such manner as the council shall deem expedient. In addition to, but not as a limitation upon, this general grant of power, the city shall have power to levy and collect ad valorem taxes on real estate, tangible personal property and machinery and tools; to levy and collect taxes for admission to or other charge for any public amusement, entertainment, performance, exhibition, sport or athletic event in the city, which taxes may be added to and collected with the price of such admission or other charge; to levy and collect taxes on hotel and motel rooms; to levy and collect privilege and capitation taxes; to levy and collect taxes from purchasers of any public utility service used within the city, which taxes may be added to and collected with the bills rendered purchasers of such service; unless prohibited by general law, to require licenses, prohibit the conduct of any business, profession, vocation or calling without such a license, require taxes to be paid on such licenses in respect of all businesses, professions, vocations and callings which cannot, in the opinion of the council, be reached by the ad valorem system; and to require licenses of all owners of vehicles of all kinds for the privilege of using the streets and other public places in the city, require taxes to be paid on such licenses, and prohibit the use of streets, alleys and other public places in the city without such license. (1970, c. 471)

§ 2.02:1. Special Service District.

A special service district of the downtown business district of the City of Portsmouth shall be created by the governing body of the City of Portsmouth, upon presentation to it of a signed petition of sixty-six percent of the taxpaying owners of real estate in number and land area in a designated area. The petition shall describe the designated area, the specific function of the district, the estimated cost of such function, the estimated monetary amount of the special tax and the estimated duration of said tax.

Upon the filing of such petition, the governing body shall fix a date for a public hearing on the question of the proposed service district, which hearing shall embrace a consideration of the designated area of the special tax district, the specific function of the district, the estimated cost of such function, the estimated monetary amount of the special tax, the estimated duration of said tax and whether the property within the proposed district will be benefited by the establishment thereof. Notice of such hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation in the City of Portsmouth, and the hearing shall not be held sooner than ten days after completion of such publication. Such notice shall include a description of the elements of the proposed district which are to be considered at the hearing.

After creating the special service district, the city council shall have the following powers and duties with respect to the service district:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide for public transportation services, parking facilities, promotion of the business district, and sidewalks and pedestrian malls for the use and benefit of the public in such service district.
2. To acquire, maintain and operate any such facilities and equipment as may be necessary and desirable to provide such additional governmental services in such district, and to acquire rights, title, interest, or easements therefor in and to real estate in such service district.
3. To contract with any person, firm, corporation, or political subdivision to provide such additional governmental services or facilities in such district and to construct, establish, maintain, and operate any such facilities and equipment, as may be necessary and desirable in connection therewith.
4. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing such additional governmental services or facilities in such district and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith, provided that the proceeds from such annual tax shall be so segregated as to enable the same to be expended in the district from which collected.
5. To authorize the city manager to employ and fix the compensation of any technical, clerical, or other personnel which may be necessary or desirable from time to time to provide such additional governmental services in such district, or for the construction, operation or maintenance of any such facilities and equipment as may be necessary or desirable in connection therewith. (1982, c. 377; 1983, c. 333)

§ 2.03. Encourage Industry.

The city shall have power to contribute its moneys to funds established and operated by nonprofit associations or corporations or by individuals for the development of the city industrially and otherwise. The city shall have the power to acquire, but not by condemnation, and to hold real property for the purpose of economic development, and to dispose of such property as permitted by the Constitution and laws of Virginia. (1970, c. 471; 1998, c. 138, 344)

§ 2.04. Grants and Gifts.

The city shall have the power to receive and accept from any federal or State agency grants of any kind and to do all things and to make any covenants or agreements

which may be necessary or required in order to obtain and use such federal or State grants. The city may receive and accept aid, contribution or gifts from any source of money, property, labor or other things of value. (1970, c. 471)

§ 2.05. Contractual Relationships.

(a) In the public interest the city may enter into contractual relationships with the federal government or any agency or department thereof; the Commonwealth, its departments, bureaus, boards and agencies; other political subdivisions; and special authorities, whether regional or not, on such terms and for such periods as the council may determine.

(b) Anything to the contrary notwithstanding, the city may agree to provide all of the personnel, equipment and facilities necessary to perform any or all of the duties and functions of any political subdivision, the entire governing body of which is appointed by the council of the city of Portsmouth; such political subdivisions are hereby authorized to enter into such contracts with the city of Portsmouth. (1970, c. 471)

§ 2.06. Eminent Domain--Generally.

(a) The powers of eminent domain set forth in Title 15.1, Chapter 1.1 of Title 25, and Chapter 1 of Title 33.1; Code of Virginia, 1950, as amended, and all acts amendatory and supplemental thereto, mutatis mutandis, are hereby conferred upon the city of Portsmouth.

(b) In any case in which a petition for condemnation is filed by or on behalf of the city, a true copy of the ordinance or resolution duly adopted by the council, declaring the necessity for any taking or damaging of any property within or without the city, for the purposes of the city, shall be filed with the petition and shall constitute sufficient evidence of the necessity of the exercise of the powers of eminent domain by the city. (1970, c. 471; 1974, c. 256)

§ 2.07. Eminent Domain--Certificates.

(a) Certificates issued pursuant to §§ 33.1-121 to 33.1-129, inclusive, Code of Virginia, 1950, as amended, and all acts amendatory thereof and supplemental thereto, may be issued by the city, signed by the city manager. Such certificate shall have the same effect as certificates issued by the State Highway Commissioner, under the aforesaid laws, and may be issued in any case in which the city proposes to acquire property of any kind by the exercise of its powers of eminent domain for any lawful purpose whether within or without the city.

(b) In addition to the powers conferred by the aforesaid laws, such certificates may be amended or cancelled by the court having jurisdiction of the proceedings, upon petition or motion of the city, at any time after the filing thereof, provided that the court shall have jurisdiction to make such order for the payment of costs and damages, if any, or the refund of any excessive sums theretofore paid pursuant to such certificate as shall, upon due notice and hearing, appear just. The court shall have jurisdiction to require refunding bonds, for good cause shown by the city or any other person or party in interest, prior to authorizing any distribution of funds pursuant to any certificate issued or deposit made by the city. (1970, c. 471; 1971, c. 55)

§ 2.08. Eminent domain--Alternate Method.

(a) In addition to the other powers conferred by law the city may, in exercising the right of eminent domain, make use of the procedure prescribed by the general law or may elect to proceed as hereinafter provided. Upon the adoption of an ordinance or

resolution directing acquisition of any property, the city may file a petition for condemnation in the clerk's office of a court having jurisdiction.

(b) Upon the filing of the petition and the funds provided for the purpose having been duly deposited to the credit of court, if the court is of the opinion that the property or interest or estate therein to be acquired for the purpose of the city as provided by law, it may order that the interest or estate of the owner of such property shall terminate and the title to such property or the interest or estate to be taken in such property shall be vested absolutely in the city and such owner shall have such interest or estate in the funds so deposited as he had in the property taken or damaged and all liens by deed of trust, judgment or otherwise upon said property or estate shall be transferred to such funds and the city shall have the right to enter upon and take possession of such property for its uses and purposes and to construct its works or improvements. The clerk of the court in which such proceedings are instituted shall make and certify a copy of the order and deliver or transmit the same to the clerk of the court in which deeds are admitted to record, who shall record the same in his deed book and index it in the name of the record title owner of such property and in the name of the city.

(c) All other proceedings under this section shall be had in accordance with the provisions of the Virginia General Condemnation Act insofar as they are then applicable and not inconsistent with the provisions of this section; provided, however, that the provisions of § 25-233 of the Code of Virginia, as now or hereafter in effect, shall apply to any property belonging to any corporation possessing the power of eminent domain that may be taken hereunder; and provided, further, that nothing herein contained shall give the said city the authority to acquire by condemnation property belonging to another city or county. (1970, c. 471)

§ 2.09. Sale of City Rights in Water Front, Streets, Utilities, Works, etc.

(a) The rights of the city of Portsmouth in and to its water front, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges and other public places, and its gas, water and electric works, shall not be sold, except by a resolution passed by a recorded affirmative vote of three-fourths of all the members elected to the council.

(b) No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than forty years, except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years.

Before selling any such property, and before granting any franchise, privilege, lease, or right of any kind to use any public property or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city shall first, after due advertisement, receive bids therefor publicly. Such advertisement shall be published for at least three days in a newspaper published in, or having a general circulation in, the city of Portsmouth. such bids may be upon such terms and may be received in such manner as the city manager may determine, unless the council shall direct otherwise.

Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, become the property of the city;

but the grantee shall be entitled to no payment by reason of the franchise. Any such plant or property acquired by the city may be sold or leased or, unless prohibited by general law maintained, controlled, and operated by the city. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

(c) The city may sell or convey any of its property to the Commonwealth of Virginia, any political subdivision thereof, or to the federal government without advertisement and without receiving bids. (1970, c. 471; 1971, c. 55)

§ 2.10. Waterworks.

The city shall also have the power to contract with any other political subdivision in this State for the use of its own water supply, or the water supply of such other political subdivision, in whole or in part, upon any terms, as may be agreed upon; and may contract for the sale of water, either within or without the city limits, and collect such rates or charges for the use thereof as it may deem proper, or as may be agreed upon with any other political subdivision under the provisions hereof or any other law of this State. The city may establish or enlarge its water works, within or without the limits of the city, contract and agree with the owners, whether the same be individuals, private corporations, or public service corporations, of any land, water, water rights or easements, for the use or purchase thereof, or may have the same condemned for the location, extension and enlargement of the works, the pipes connected therewith, or any fixtures or appurtenances thereof. The city shall have the power to make reasonable rules and regulations and to enact ordinances with adequate penalties for protecting its water supply from pollution and for protecting from injury its waterworks, pipes, fixtures, lakes and land or anything connected therewith, and for these purposes to exercise full police powers and sanitary patrol over all of Portsmouth's lands comprised within the watershed tributary; and to prosecute violations of any such rules, regulations, and ordinances and to obtain injunctive relief in the courts of the city, regardless of the place of occurrence of any violation or act. (1970, c. 471; 1993, c. 913, 968)

§ 2.11. Other Utilities.

The council of the city of Portsmouth, in addition to other powers conferred by law, shall have the power: (1) to establish, acquire, enlarge, maintain and operate electric lighting and power plants and systems, gas works and systems, motor bus and other transportation systems, either within or partly within and partly without, the limits of the city; (2) to furnish electric current, transportation and gas to consumers for domestic or commercial purposes, and charge and collect compensation therefor; (3) to acquire by purchase, lease, condemnation or otherwise, land, rights of way and easements for the purpose of establishing, extending, maintaining and repairing such plants, systems or works, wires, poles, conduits, motor vehicles, pipes or other fixtures or appurtenances thereto; (4) to acquire by purchase or lease, in whole or in part, the lighting and power plants or systems, gas works or systems, motor bus or other transportation systems, and other property and appurtenances of any person or corporation operating within the city, or in the territory contiguous thereto; and (5) to contract with any person, firm or corporation for the purpose of furnishing or selling electric current, gas and transportation to consumers and users thereof. The council shall have the power to

protect from injury by adequate penalties the plants, systems, buses, wires, poles, conduits, pipes and other property connected therewith, within or without the limits of the city. (1970, c. 471)

§ 2.12. Real Estate Assessments.

(a) All real estate within the City of Portsmouth shall be assessed for taxation in accordance with the provisions of the general laws of the Commonwealth except as hereafter provided in subsection (b) hereof.

(b) (1) In lieu of the method now prescribed by general law, the council shall provide for the annual assessment of real estate for taxation. To that end it shall appoint a single assessor of real estate to assess such real estate for taxation to serve at the pleasure of the council. It may prescribe the duties of such assessor, may require that he give his entire time to the duties of his office, may fix his compensation, which shall be payable out of the treasury of the city, and may provide for such technical and clerical assistance as may be necessary and advisable and for the payment of any other expenses that may be properly incident thereto. The annual assessments shall be completed by the assessor by the thirty-first day of January of the tax year in which they are made.

(2) The beginning of the tax year for the assessment of taxes on real estate shall be July the first, and the owner of real estate on that day shall be assessed for the taxes for the tax year beginning on that day. All such real estate shall be assessed at its fair market value and the taxes for each year on such real estate shall be extended on the basis of the last assessment made prior to such year, subject to such changes as may have been lawfully made.

(3) All duties that heretofore devolved upon the commissioner of the revenue of the city with respect to the assessment of real estate shall be transferred to and devolve upon the assessor appointed by the City Council and who shall serve at the pleasure of Council, pursuant to this subsection. The assessor shall prepare the land books and extend the taxes thereon and perform all the duties required by law to be performed by the commissioner of the revenue in respect to real estate assessments. The clerks of the courts of the city shall furnish to the assessor the list of real estate transfers now required to be furnished to the commissioner of the revenue.

(4) Notwithstanding the provisions of § 58.1-3370 of the Code of Virginia, the judges of the circuit court of the city shall, annually, appoint for the city a board of equalization of real estate assessments, to be composed of three members, who shall be citizens and freeholders of the city. The terms of such members shall commence on their appointment and shall expire on the thirtieth day of April of the year in which they are appointed. The appointing authority shall fill any vacancy for the unexpired term. The members of the board shall receive per diem compensation for the time actually engaged in the duties of the board, to be fixed by the council, and paid out of the treasury of the city; provided, however, the council may limit the per diem compensation to such number of days as in its opinion is sufficient for the completion of the work of the board. Such board of equalization shall have and may exercise the power to revise, correct and amend any assessment of real estate made by the assessor in the year in which they serve, and to that end shall have all the powers conferred upon boards of equalization by Chapter 32 of Title 58.1 of the Code of Virginia, and any acts amendatory thereof and supplemental thereto. Notwithstanding such chapter, however, the board of equalization may adopt any regulations providing for the oral presentation, without formal petitions or

other pleading or requests for review, and looking to the further facilitation and simplification of proceedings before the board.

(5) Any person aggrieved by any assessment made by the assessor or the board of equalization may apply for relief in the manner provided by § 58.1-3984 of the Code of Virginia.

(6) This subsection shall not apply to any real estate assessable under law by the State Corporation Commission.

(7) All provisions of law relating to the assessment of real estate in cities not in conflict with the provisions of this subsection shall apply to the assessment made pursuant thereto. (1970, c. 471; 1974, c. 256; 1993, c. 913, 968)

§ 2.13. Provisions for Penalties for Nonpayment of Taxes.

Any person failing to pay any taxes or licenses due to the City of Portsmouth shall incur a penalty thereon to be payable at such time or times as may be prescribed by ordinance of the city council, provided such penalty shall not exceed the maximum, if any, which may be provided by the general law. Interest as allowed by statute shall be collected upon the principal of the taxes and levies then remaining unpaid; which penalty and interest and the cost of advertising or posting not exceeding one dollar for each parcel of property advertised or posted, shall be added to the amount of the taxes due by such taxpayer. (1970, c. 471; 1993, c. 913, 968)

§ 2.14. Imposition of Fees.

Whenever, in the judgment of council, it is deemed advisable in the enforcement of any ordinance or regulation, in the rendering of services or in the exercise of any of its powers, it may establish and collect such fees and charges as it may find to be reasonable therefor. (1974, c. 256)

§ 2.15. Additional powers.

In addition to the powers granted by other sections of this charter, the city shall have the power to adopt ordinances not in conflict with the Constitution or this charter and permitted by general laws of the Commonwealth for the purpose of exercising police powers and for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants. (1977, c. 119)

ARTICLE III City Council

§ 3.01. Composition.

The council shall consist of a mayor and six councilmen to be elected by and from the city at large. (1970, c. 471; 1973, c. 351)

§ 3.02. Nomination of Candidates.

(a) Candidates for the offices of mayor and councilmen under the provisions of this charter shall be nominated by petition. Any qualified voter of the city may be nominated as provided herein. Subject to the provisions herein, there shall be printed on the ballots to be used in any municipal election for the election of mayor and councilmen the names of all candidates who have been nominated by petition and no others. A nominating petition shall conform substantially to the following requirements:

(1) Such petition shall state the name and place of residence of each person whose name is presented for a place upon the ballot, and shall request such person or persons to

become a candidate or candidates for the office of mayor or councilmen for the City of Portsmouth.

(2) Such petition shall be signed by at least one hundred and twenty-five qualified electors of the city and shall contain the residence address of each such elector and an affidavit of any other such qualified voter who witnessed said signatures.

(3) Each elector signing a petition may subscribe to one nomination for each of the places to be filled at the ensuing election, and no more.

(4) Such petition shall not be signed by any elector prior to the first Tuesday in January of the year of such election, and such petition shall be filed with the General Registrar of the city not later than the time fixed for the closing of the polls on the first Tuesday in March of the year of such election.

(b) Any person whose name has been submitted for candidacy by any such petition, shall file his acceptance of such candidacy with the General Registrar of the city not later than the time fixed for the closing of the polls on the first Tuesday in March of the year of such election, otherwise his name shall not appear on the ballot. The filing of such acceptance shall be deemed equivalent to the filing of notice of candidacy under the general election laws of the State, and no other notice of candidacy need be given by the person filing the same.

(c) No person may be a candidate for the office of mayor and for the office of councilman in the same election.

(d) Candidates for the offices of mayor and councilmen shall appoint one campaign treasurer and file the name and address of said campaign treasurer with the Portsmouth Electoral Board not later than the first Tuesday of March of the year of such election. Any candidate who fails to appoint and report the appointment of a treasurer shall be deemed to have appointed himself treasurer. All candidates for such offices shall comply with the applicable provisions of the Fair Elections Practices Act of Chapter 9, Title 24.1 of the Code of Virginia, 1950, as amended. (1970, c. 471; 1973, c. 351; 1974, c. 256; 1993, c. 913, 968)

§ 3.03. Election of Mayor and Councilmen.

(a) On the first Tuesday in May in 1974, and on the first Tuesday in May of every fourth year thereafter, there shall be a general election at which time the qualified voters of the city shall elect three councilmen for terms of four years. On the first Tuesday in May 1976, and on the first Tuesday in May of every fourth year thereafter, there shall be a general election at which time the qualified voters of the city shall elect a mayor and three councilmen for terms of four years. All terms shall begin on the first day of July next following the date of their election.

(b) The candidates at any municipal election for the election for councilmen equal in number to the places to be filled who shall receive the largest number of votes cast at such election shall be declared elected to the office of councilman. The candidate for mayor who receives the largest number of votes at any municipal election shall be declared elected to the office of mayor.

(b1) In the event any member of council during his term of office shall desire to be a candidate for the office of mayor, he shall be eligible to do so, but shall tender his resignation as a member of council not less than ten days prior to the final date for the filing of petitions and notices of acceptance as specified herein, such resignation to be effective the thirtieth day of June of such election year. Such resignation shall state the

councilman's intention to run for the office of mayor and shall require no formal acceptance by the remaining members of council and shall be final and irrevocable as of the date it is tendered.

(b2) The remaining two-year term of office of any councilman who has resigned for the stated purpose of running for office of mayor shall be filled at the same succeeding general municipal election in which the office of mayor is filled. After such resignation such two-year term shall be filled by the candidate for councilman receiving the next highest vote to those candidates declared elected to the office of councilman pursuant to subsection (b) of this section. Such two-year term shall begin on the first day of July next following the date of such election.

(c) The city clerk shall notify all successful candidates of what is necessary for them to do to qualify for office immediately after their election has been certified by the proper officials. (1970, c. 471; 1973, c. 351; 1974, c. 256; 1976, c. 1)

§ 3.04. Vacancies in Office of Councilmen.

If, for any reason whatsoever, there be an insufficient number of certified elected candidates for the office of councilman after any municipal election or if a council vacancy otherwise occurs for any reason, except for resignations to run for the office of mayor, such vacancies shall be filled for the unexpired portion of the term by majority vote of the remaining members of the council, or, if the council shall fail to fill a vacancy in its membership within sixty days of the occurrence of the vacancy by appointment by a majority of the judges of the circuit court of the city. If any person elected to the council at a regular municipal election shall fail to take the oath of office prior to the first day of July following such election, he shall be deemed to have declined the office, and his seat shall be deemed vacant. If any person appointed to the council to fill an unexpired term shall fail to take the oath of office within thirty days of such appointment, he shall be deemed to have declined the office, and his seat shall be deemed vacant. (1970, c. 471; 1974, c. 256; 1976, c. 1)

§ 3.05. Induction of New Members.

The mayor and each councilman, before entering upon the duties of his office, shall take the oath of office. The oath of office may be administered by the city clerk, the judge or clerk if any court, or by any other officer authorized by law. (1970, c. 471; 1973, c. 351)

§ 3.06. Election of Mayor and Vice-Mayor.

(a) The city attorney shall preside over any meeting, and any adjournment thereof, until a mayor and a vice-mayor shall have been elected or is present or council has selected one of its members to preside over the meeting.

(b) At the first regular meeting in July, 1976, and at the first regular meeting in July every second year thereafter, the council shall proceed to choose by majority vote of all the members thereof one of their number to be vice-mayor for the ensuing two years. Until this business has been completed, the council shall not adjourn for a period longer than forty-eight hours.

(c) The mayor shall be elected in 1976, and every four years thereafter in the manner specified in § 3.03 herein. (1970, c. 471; 1973, c. 351; 1993, c. 913, 968)

§ 3.07. Election of Mayor Pro Tempore.--When from any cause both the mayor and the vice-mayor are absent from a meeting or are unable to preside, a mayor pro tempore shall be elected by the council to preside during the absence or disability of the

mayor and vice-mayor. The city attorney shall preside over any meeting until a mayor pro tempore shall have been elected, which shall be the first order of business of any such meeting. (1970, c. 471)

§ 3.08. Vacancies in the Offices of Mayor or Vice-Mayor.

(a) Vacancy in the office of mayor shall be filled for the remainder of the unexpired term thereof in the same manner as prescribed for vacancies in the office of councilman in § 3.04 herein. In the event the mayor is appointed from the members of the council and elects to serve as such, he shall immediately tender his resignation as a member of council and the vacancy created thereby shall be filled as provided in § 3.04.

(b) Vacancy in the office of the vice-mayor, from whatever cause arising, shall be filled by majority vote of all the members of the council for the unexpired portion of the term. (1970, c. 471; 1973, c. 351)

§ 3.09. Duties of Mayor.

The mayor shall preside over the meetings of the council and shall have the same right to vote and speak therein as other members of council. He shall be recognized as the head of the city government for all ceremonial purposes, the purposes of military law, and the service of civil process. In the absence or disability of the mayor, the vice-mayor shall perform the duties of mayor. (1970, c. 471)

§ 3.10. (1970, c. 471; 1982, c. 377; repealed 1993, c. 913, 968)

§ 3.11. Councilmen Prohibited From Furnishing City Anything Requiring Payment.

No member of the city council shall be allowed to furnish any goods or services except services as a member of council to the city for which he receives any consideration in money or otherwise, either directly or indirectly, under penalty of the forfeiture of his office as councilman, as well as forfeiture of the consideration involved; and any person making under oath, a charge of this nature before any judge of the circuit court shall cause the accused councilman to show cause why he should not be removed; and if such charge is sustained, the said judge shall remove him from office. (1970, c. 471; 1974, c. 256)

§ 3.12. Council Not to Interfere in Appointments or Removals.

Neither the council nor any of its members shall direct or request the appointment of any person to or his removal from any office or employment by the city manager or by any of his subordinates or in any way take part in the appointment of or removal of officers and employees of the city except as specifically provided in this charter. Except for the purpose of inquiry, the council and its members shall deal with the administrative services solely through the city manager, and neither the council nor any member thereof shall give orders either publicly or privately to any subordinate of the city manager. Any councilman violating the provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall be guilty of a misdemeanor and upon conviction thereof shall cease to be a councilman. (1970, c. 471)

§ 3.13. Council as Continuing Body.

The council shall be a continuing body, and no measure pending before such body shall abate or be discontinued by reason of the expiration of the term of office or removal of the members of said body or any of them; provided, however, that any measure, ordinance or resolution which is not finally adopted or approved by the council within six months of the date of its introduction in or presentation to the council shall not thereafter

be considered by such body unless such measure, ordinance or resolution shall again be introduced in or presented to the council as required by law. (1970, c. 471)

§ 3.14. Special Meetings.

Special meetings of the council may be called by the mayor or any three members of the council. Notice of each special meeting shall contain a statement of the specific item or items of business to be transacted and no other business shall be transacted at such meeting except by the unanimous consent of all the members of the council. (1970, c. 471)

§ 3.15. Procedures.

No ordinance or resolution appropriating money exceeding the sum of \$500, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body. On the final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded. (1970, c. 471)

§ 3.16. Enactment of Ordinances.

(a) All ordinances passed by the council shall be in effect thirty days from and after the date of their passage unless otherwise indicated therein.

(b) All laws, resolutions and ordinances of the city council may be read in evidence in all courts of justice, and in all proceedings before any officer, body or board in which it shall be necessary to refer thereto, either from a copy thereof, certified by the city clerk, or from the volume of ordinances printed by authority of the city council.

(c) The provisions of this charter pertaining to the processes of initiative and referendum shall not apply to administrative, appropriation, financial or revenue ordinances. (1970, c. 471)

ARTICLE IV City Clerk

§ 4.01. City Clerk.

The council shall appoint a city clerk who shall serve at the pleasure of the council. The city clerk shall receive compensation to be fixed by council, and all other fees received shall be paid into the city treasury. (1970, c. 471; 1993, c. 913, 968)

§ 4.02. Duties.

The city clerk shall be the clerk of the council, shall keep the journal of its proceedings, and shall record all ordinances in a book kept for the purpose. He shall be the custodian of the corporate seal of the city and shall be the officer authorized to use and authenticate it. All records in his office shall be public records and open to inspection at any time during regular business hours. He shall perform such other duties as are required by law or required of him by the council. (1970, c. 471)

§ 4.03. (1970, c. 471; repealed, 1993, c. 913, 968)

ARTICLE V City Manager

§ 5.01. Appointment, Qualifications, etc.

The city manager shall be the chief executive officer of the municipal government. He shall be chosen by the council without regard to his political beliefs, and solely upon the basis of his executive and administrative qualifications. The choice shall not be limited to inhabitants of the city and State. The city manager shall receive such compensation as shall be provided by the council by ordinance. He shall be appointed for an indefinite period, and shall serve at the pleasure of the council. In the event of the inability of the city manager to temporarily perform the duties of his office by reason of absence, vacation, sickness or other disability, the city manager shall designate someone to perform the duties of his office during such absence or disability, provided if the city manager is unable to make such designation or if he is permanently unable to perform the duties of his office, the council shall designate someone to perform the duties of such office. (1970, c. 471; 1980, c. 152)

§ 5.02. Powers and Duties of the City Manager.

The city manager shall be responsible to the council for the efficient administration of all affairs of the city. He shall have power, and it shall be his duty:

- (a) To see that all laws and ordinances are enforced.
- (b) Except as otherwise provided by law, to appoint all heads or directors of departments, and all subordinate officers and employees of the city with the power to discipline and remove any officer or employee so appointed.
- (c) To exercise supervision and control over all departments and divisions created herein, or that may be hereafter created by the council, the head of which is appointed by him.
- (d) To appoint qualified firefighters as fire marshals for the city who shall have the same powers and authority as a sheriff at common law, shall enforce all laws, rules and regulations having as their object the prevention and elimination of hazards to life and property arising from fire, and shall investigate all cases of alleged arson and all other cases of fires alleged to involve criminality.
- (e) To appoint as special police such members of the U. S. Naval Shipyard police force as he deems advisable to assist in traffic control in and about the shipyard and such employees of the city as he deems qualified to act as such on property owned or controlled by the city. Such special police shall be conservators of the peace.
- (f) To attend all regular meetings of the council, with the right to take part in the discussion, but having no vote. He shall be entitled to notice of all special meetings.
- (g) To recommend to the council for adoption such measures as he may deem necessary or expedient.
- (h) To make and execute in the ordinary course of business all contracts on behalf of the city and such other contracts as may be authorized by the council.
- (i) At the direction of council to prepare and submit to the council an annual or biennial budget after receiving estimates made by the heads or directors of the departments, or of any board or commission not within a department.

(j) To keep the council at all times fully advised as to the financial condition and needs of the city.

(k) To perform all such other duties as may be prescribed by this charter, or be required of him by ordinance or resolution of the council. (1970, c. 471; 1974, c. 256)

§ 5.03. Temporary Transfer of Personnel Between Departments.

The city manager shall have power, whenever the interests of the city require, irrespective of any other provisions of this charter, to assign employees of any department, bureau, office or agency, the head of which is appointed by the city manager, to the temporary performance of duties in another department, bureau, office or agency. (1970, c. 471)

ARTICLE VI Other City Officers

§ 6.01. Election and Term of Elected Officers.

There shall be one attorney for the Commonwealth, one commissioner of the revenue, one city treasurer and one sheriff, elected by the qualified voters of the city of Portsmouth, on Tuesday after the first Monday in November, 1973, for the term of four years, and every four years thereafter. Those elected officers shall enter upon the discharge of their duties on the first day of January immediately following their election. (1970, c. 471; 1971, c. 55)

§ 6.02. Attorney for the Commonwealth.

The attorney for the Commonwealth for the city of Portsmouth shall have such duties as shall be imposed upon him by general law and by this charter. He shall prosecute the violations of all city ordinances in the district courts of the city of Portsmouth, when requested by the judges of such courts, and upon appeal in the circuit court, and shall notify the city attorney of all such prosecutions in which the validity of a city ordinance is attacked. (1970, c. 471; 1974, c. 256)

§ 6.03. City Treasurer.

In addition to the duties imposed upon him by State law, the city treasurer shall have such other official duties as may be imposed upon him by this charter and the ordinances of the city. He shall collect and receive all city taxes, levies, assessments, license taxes, rents, fees and all other revenues or moneys accrued to the city, and for that purpose shall be vested with any and all powers which are now or may hereafter be vested in such city treasurer as collector of the State taxes. He shall be the custodian of all public moneys of the city, and of all other moneys coming into his hands as city treasurer. (1970, c. 471)

§ 6.04. Commissioner of the Revenue.

The commissioner of the revenue shall perform such duties not inconsistent with the laws of the State in relation to the assessment of property and licenses as may be required by the council for the purpose of levying city taxes and licenses. He shall have power to administer such oaths as may be required by the council in the assessment of license taxes or other taxes for the city. He shall make such reports in regard to the assessment of both property and licenses, or either, as may be required by the council or by the city manager. He shall perform such other duties and have such other powers as are now or may hereafter be prescribed by law or ordinance. (1970, c. 471)

§ 6.05. 1970, c. 471; 1974, c. 256; repealed, 1987, c. 119.

§ 6.06. Sheriff.

In addition to the duties imposed upon him by State law, the sheriff and his deputies are authorized and directed to accept and receive payment of such fines and costs as may have been imposed upon any person in his custody by a court of competent jurisdiction, giving his official receipt therefor. Upon the payment of such fines and costs, the sheriff or his deputy shall release the offender from custody if not prohibited by law or court order. Any moneys so received shall be accounted for and paid over to the clerk of the court which imposed such penalty upon the offender immediately upon the opening of such clerk's office on the next regular business day or as soon thereafter as practicable. The clerk shall give his official receipt to the sheriff for such moneys so received. (1970, c. 471; 1971, c. 55)

§ 6.07. 1970, c. 471; 1971, c. 55; 1974, c. 256; repealed, 1986, c. 50.

§ 6.08. (1970, c. 471; 1977, c. 119; repealed, 1993, c. 913, 968)

ARTICLE VII Department of Law

§ 7.01. Department of Law.

There shall be a department of law which shall consist of the city attorney and such deputy or deputies and assistant city attorneys and other employees as may be authorized. (1970, c. 471; 1993, c. 913, 968)

§ 7.02. City Attorney.

The head of the department of law shall be the city attorney. He shall be an attorney at law licensed to practice law in the Commonwealth. He shall be appointed by the council and shall serve at its pleasure. (1970, c. 471)

§ 7.03. Powers and Duties.

The city attorney shall:

(a) Be the chief legal advisor of the council, the city manager and of all departments, boards, commissions and agencies of the city in all matters affecting the interests of the city and shall upon request furnish a written opinion on any question of law involving their respective official powers and duties;

(b) At the request of the city manager or any member of the council, prepare ordinances for introduction and at the request of the council or any member thereof shall examine any ordinance after introduction and render his opinion as to the form and legality thereof;

(c) Draw or approve all bonds, deeds, leases, contracts, or other instruments to which the city is a party or in which it has an interest;

(d) Have the management and control of all the law business of the city and the departments, boards, commissions, and agencies thereof or in which the city has an interest, and represent the city as counsel in any civil case in which it is interested and, together with the attorney for the Commonwealth, in criminal cases in which the constitutionality or validity of any ordinance is brought in issue;

(e) Institute, prosecute, defend, compromise and settle all legal proceedings he may deem necessary or proper to protect the interests of the city, subject to the authority of city council;

(f) Attend in person or assign one of his assistants to attend all meetings of the council;

(g) Appoint and remove such deputy and assistant city attorneys and other employees as shall be authorized by the council;

(h) Authorize the deputy or assistant city attorneys or any of them or special counsel to perform any of the duties imposed upon him; and

(i) Have such other powers and duties as may be assigned to him by the council. (1970, c. 471; 1975, c. 278)

§ 7.04. Action Against the City for Damages.

Whenever in any action, suit or proceeding against the city, any person, firm or corporation may be liable or responsible with the city, such person, firm or corporation shall, upon motion of the city, be joined as a defendant with the city. Whenever there is a verdict and judgment against the city and any other defendant, it shall be ascertained by either the court or the jury which of the defendants is primarily liable or responsible. (1970, c. 471)

ARTICLE VIII

Education

§ 8.01. School Board.

The school board of the city of Portsmouth shall consist of nine trustees who shall be appointed by the council from the city at large. Every school trustee shall, at the time of his appointment, be a resident of the city of Portsmouth, and if he shall cease to be a resident of the city, his office shall be deemed vacant. The school trustees in office on the effective date of this act shall continue in office for the terms for which they were appointed, and their successors shall be appointed in accordance with the provisions of this section for three-year terms. (1970, c. 471)

§ 8.02. School Funds.

The school board of the city shall on the first days of the months of January and July in each year transmit to the council and to the city manager a detailed statement of all money received by said board or placed to its credit and all moneys disbursed by said board during the preceding six months, whether such moneys shall have been appropriated by the council or received from any other source for the purpose of public education. Separate accounts shall be kept by the said board of the moneys appropriated by the council, and moneys received from other sources, and every such statement shall show the balance of each class of funds on hand or under control of said board as of the date thereof.

The said school board shall prepare and submit to the city manager, at the time requested by him, for his information in making up the budget a detailed estimate of the amount of money required for the conduct of the public schools of the city for the ensuing budgetary period, with an estimate of the amount of all funds which will probably be received by said board for the purpose of public education from sources other than appropriation by the council.

No money shall be paid out or become available to be paid out for any contemplated expenditure unless and until there has first been made an appropriation for such contemplated expenditure by the council.

Should any moneys, other than capital items, derived from sources other than State funds be unexpended in any year and thus become available for use the next year pursuant to § 22.138 of the Code of Virginia, the council may provide in the budget that the city's share of the appropriation for the next ensuing year shall be decreased in a like amount. (1970, c. 471; 1974, c. 256)

ARTICLE IX Administration of Justice

§ 9.01. District Courts.

There shall be a general district court and a juvenile and domestic relations district court for the city of Portsmouth. Such courts shall have such jurisdiction and other judicial powers as conferred by general law. (1970, c. 471; 1974, c. 256)

§ 9.02. 1970, c. 471; 1971, c. 56; repealed, 1974, c. 256.

§ 9.03. 1970, c. 471; repealed, 1974, c. 256.

§ 9.05. 1970, c. 471; 1971, c. 56; repealed, 1974, c. 256.

§ 9.06. 1970, c. 471; repealed, 1974, c. 256.

§ 9.07. 1970, c. 471; repealed, 1974, c. 256.

§ 9.08. 1970, c. 471; 1973, c. 351; repealed, 1974, c. 256.

ARTICLE X Initiative, Referendum and Recall

§ 10.01. Petition for Initiative.

(a) Any proposed ordinance, including any ordinance for the repeal or amendment of an existing ordinance may be submitted to the council by petition signed by electors equal in number to at least thirty per centum of the electors voting for governor in the last preceding gubernatorial election. Such petition shall contain the proposed ordinance in full.

(b) The petition shall be substantially in the following form: To the Council of the City of Portsmouth, Virginia:

We, the undersigned, qualified electors of this city, respectfully petition your honorable body to ordain the following ordinance:

Signature of Elector	Street Address	Date Signed
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c) The execution of the petition by an elector shall be acknowledged by him, or it may be proved by the oath of a witness who shall swear that he knows the elector and that the petition was signed by the elector in the presence of the witness. The petition may be in the form of separate sheets, each sheet containing at the top thereof the petition as set forth above, and when bound together and offered for filing, shall be deemed to constitute one petition. (1970, c. 471; 1972, c. 260)

§ 10.02. Petition for Referendum.

(a) At any time within thirty days following the adoption of an ordinance, except an emergency ordinance, a petition signed by electors equal in number to at least thirty per centum of the electors voting for governor in the last preceding gubernatorial election protesting against the enactment of such ordinance and requesting its repeal, may be presented to the council. Such petition need not contain the text of the ordinance sought to be repealed, but it shall be sufficient to refer to it by ordinance number or code section number.

(b) The petition shall be substantially in the following form:

To the Council of the City of Portsmouth, Virginia:

We, the undersigned, qualified electors of this city, respectfully petition your honorable body to repeal the following ordinance:

Signature of Elector	Street Address	Date Signed
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c) The execution of the petition by an elector shall be acknowledged by him, or it may be proved by the oath of a witness who shall swear that he knows the elector and that the petition was signed by the elector in the presence of the witness. The separate sheets, each sheet containing at the top thereof the petition as set forth above, and when bound together and offered for filing, shall be deemed to constitute one petition. (1970, c. 471; 1972, c. 260)

§ 10.03. Time of Filing.

All papers comprising a petition for initiative or referendum shall be filed with the city clerk thirty days from the date of the first signature thereon, and when so filed, the clerk shall submit the same to the council at its next regular meeting. (1970, c. 471)

§ 10.04. Duty of City Attorney.

Before any ordinance proposed by petition in accordance with § 10.01 hereof, shall be submitted to the council, it shall first be approved as to form by the city attorney. If he shall disapprove of the proposed ordinance or amendment, he shall state his reasons therefor in writing to the person submitting the proposal to him for his examination. (1970, c. 471)

§ 10.05. Duty of the Council.

Upon the presentation of a petition as provided in this article, it shall be the duty of the council either to pass such proposed ordinance without alteration or repeal such existing ordinance within sixty days after determining the sufficiency of the petition, or submit the question of the adoption or repeal of the ordinance, as the case may be, to the electorate at the next general election occurring more than sixty days after determining the sufficiency of the petition. (1970, c. 471)

§ 10.06. Elections.

(a) All initiative and referendum elections shall be conducted, and the result canvassed and certified by the regular election officials provided by the general laws of

the State; and except as otherwise provided in this article, all such elections shall be governed by the said general election laws.

(b) If a majority of the qualified electors voting on a proposed ordinance shall vote in favor thereof, it shall thereupon become a valid and binding ordinance of the city, and the same shall not be repealed or amended, except by a vote of the electors, within two years thereafter.

(c) If a majority of the qualified electors voting on the repeal of an existing ordinance shall vote in favor of its repeal, it shall thereupon stand repealed and be of no force and effect.

(d) Where an election has been held upon the question of the adoption or repeal of any ordinance in accordance with this article, then no election may be held upon a substantially similar question for two years following such election, except that the council may submit the repeal, amendment or modification of any ordinance adopted under subsection (b) above, to be voted upon at any general election succeeding its adoption. (1970, c. 471)

§ 10.07. Publication of Ordinance.

Whenever an ordinance is required under the provisions of this article, to be submitted for adoption or repeal to the electors of the city, the city clerk shall cause the ordinance to be published once in a daily newspaper published in or having a general circulation in the city of Portsmouth. Such publication shall occur not more than sixty days nor less than thirty days prior to the date of such election. (1970, c. 471)

§ 10.08. Judicial Review.

A petition which complies with the requirements of this article as to form, number of signers, and manner of execution, shall be accepted as prima facie sufficient. The circuit court of the city shall have summary jurisdiction upon complaint of an elector to determine the sufficiency of the petition and the genuineness of the signatures thereon, and the qualifications of the electors signing the same, and may make such order in the premises as justice may require; but such proceedings shall be instituted within ten days after presentation of the petition, and the burden of proof shall be on the complainant. (1970, c. 471; 1974, c. 256)

§ 10.09. Recall of Elective Officers.

(a) Any elective officer of the city may be removed from office at any time after one year from the beginning of his term of office by the electors qualified to vote for a successor for such incumbent. The procedure to effect such removal shall be as hereinafter set forth.

(b) A petition signed by electors equal in number to at least thirty per centum of the electors of the city voting for Governor in the last preceding gubernatorial election, and demanding the election of a successor of the officer sought to be removed, shall be filed with the clerk of the circuit court which petition shall contain a general statement of the grounds upon which the election of a successor is sought. Such petition may be filed at any time after one year has elapsed since the beginning of the term of the official sought to be removed. Each signer shall add to his signature his place of residence, giving street and number if any, and the date signed. Such petition may be in the form of separate papers, but each separate paper to which signatures are appended shall contain at the top thereof the original petition or a duplicate statement thereof, and when bound together and offered for filing, such separate papers shall be deemed to constitute one

petition with respect to the election of the successor of the officer or officers named therein. One of the signers of such petition shall make oath before a proper official that the statements made therein are true, as he believes, and upon such separate paper, the circulator of the petition to which signatures are appended shall make oath that each signature to such paper is the genuine signature of the person whose name it purports to be, and that it was signed in his presence.

(c) If it appears that the petition is signed by the requisite percentage of electors, the same shall be accepted as prima facie regular and sufficient, but it shall be subject to summary review in the same manner as provided in § 10.08 of this article.

(d) If the petition shall be sufficient, and if the officer or officers whose removal is sought shall not resign within five days after the sufficiency of the petition has been determined by a judge of the circuit court, a judge thereof shall thereupon order and fix a day for holding an election for the selection of a successor to each officer named in said petition, which election shall be held not less than thirty nor more than forty days from the presentation of the petition or from the making of any court order thereon. Such judge shall cause publication of notice and all arrangements to be made for holding such election and the same shall be conducted and the result thereof returned and declared in all respects as in other special elections so far as possible.

(e) A nomination of a candidate to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the clerk of the circuit court at least ten days prior to such special election, a petition proposing a person for such office, signed by the electors equal in number to at least thirty per centum of the electors of the city voting for Governor in the last preceding gubernatorial election.

(f) The ballots at such election shall conform to the following requirements: With respect to each officer whose removal is sought the question shall be submitted: Shall (name of officer) be removed from the office (name of office) by recall? Beneath the aforesaid question shall be placed the names of the candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed himself.

(g) In any such election, if a majority of the votes cast on the question of removal be affirmative, the candidate receiving the highest number of the votes cast shall be declared elected and if more than one councilman is removed at such election the candidates receiving the highest number of votes, equal in number to the number of councilmen removed, shall be declared elected. The officer whose removal is sought shall thereupon be deemed removed from office upon the announcement of the official canvass of the election. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. In case the person or persons receiving the highest number of votes shall fail to qualify within ten days after receiving notification of his election, the office shall be deemed vacant. The question of the removal of any officer shall not be submitted to the electors a second time during the same term of office, until after the expiration of one year from the determination of the first application for his removal. The method of removal herein provided is cumulative and additional to such other methods as may be provided by law. (1970, c. 471; 1972, c. 260; 1974, c. 256)

ARTICLE XI Personnel

§ 11.01. Civil Service Commission: Creation and Term of Office.

There shall be in the city a civil service commission, which shall be composed of three persons of known sympathy with the merit system.

Notwithstanding the provisions of § 15.1-7.1 of the Code of Virginia, the civil service commission shall retain and exercise all of the power and authority granted in this article, including the power of review of disciplinary actions of the appointing authority. These powers shall not be exercised by any other administrative body.

The members of such commission shall be appointed by the judges of the circuit court of the city of Portsmouth. No person shall be appointed a member of such commission who is not a citizen of the United States, and a resident of the city of Portsmouth, or who holds any office or post of employment under said city, or the State of Virginia or any political subdivision thereof, or any public service corporation owned by said city or State, other than the office of notary public, or who is an officer or member of any national, State or local committee of any political party, or an officer of such party, or who is an officer or member of a committee of a partisan political club, or an officer of such club, and who is known to be not in sympathy with the merit system. Such appointments shall be made without regard to race, color, religion, sex or national origin.

The term of office of such commissioners shall be four years. As and when the terms of office of the commissioners in office prior to the effective date of this charter shall expire, their successors shall be appointed for terms of four years. Any vacancy occurring after such effective date shall be filled by such judge for the unexpired portion of the term of the commissioner whose office became vacant.

Any member of such commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or for injecting, or attempting to inject, political, religious, racial or other unlawful discriminatory influence into the administration of the provisions of this article, or for other good cause, by the circuit court of the city of Portsmouth; provided, however, that no member of the commission shall be removed until charges have been preferred in writing, due notice and a full hearing had.

The members of such commission shall devote due time and attention to the performance of the duties herein specified and imposed upon them. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this article. (1970, c. 471; 1974, c. 256; 1975, c. 278)

§ 11.02. Functions and Duties.

The commission shall hold regular meetings upon call of the chairman and at least once a quarter and such additional meetings as may be required for the proper discharge of their duties.

(a) It shall be the duty of the civil service commission to make suitable rules and regulations not inconsistent with the applicable provisions of law and this article. Such

rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject or personnel administration, and which may be considered desirable to further carry out the general purposes of the civil service provisions of this article, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(b) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and of manual skill.

(c) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the civil service provisions of this article, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected hereby, and ascertain whether the civil service provisions of this article and all such rules and regulations are being obeyed.

Such investigations may be made by the commission or by the commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission, as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuse exist, or setting forth in concise language, in writing, the necessity for such investigation.

(d) In the course of such investigation or hearing as hereinafter provided for, the commission or designated commissioner, or secretary, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and also to cause the depositions of witnesses residing within or without the city to be taken in the manner prescribed by law for like depositions in civil actions in the court of original and unlimited jurisdiction in civil suits of the State; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a circuit judge in his judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of the civil service provisions of this article, and punishable as such.

(e) All hearings and investigations before the commission shall be governed by this article and by the rules and practice and procedure to be adopted by the commission, and in the conduct thereof the commission shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

(f) The commission shall hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; appeals of officers or employees, who are included in the classified service by the provisions of this article, for an investigation of their removal, suspension, demotion or discharge, as hereinafter provided for; the rejection of any examination, and such other matters as may be referred to the commission.

(g) The commission shall establish or maintain in card or other suitable form a roster of officers and employees.

(h) The commission shall provide for, formulate and hold competitive tests devised in accordance with applicable laws to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that men laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

(i) The commission shall certify to the appointing authority, which has made a written request, the names of the persons on the eligibility list for the class for which one or more vacant positions exist; (and if there is no such list, to establish a provisional or temporary appointment list of such class). No temporary or provisional appointment shall continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any fiscal year.

(j) The commission shall keep such records as may be necessary for the proper administration of the civil service provisions of this article.

(k) The civil service commission shall make such reports as the council may by ordinance or resolution require; provided, however, it shall be the duty of the commission to report at least annually to the council showing its own action, the rules in force, the practical effects thereof, and any suggestions it may have for the improvement of the classified service. (1970, c. 471; 1974, c. 256; 1993, c. 913, 968)

§ 11.03. Annual Appropriation.

There is hereby appropriated out of the general funds of the city of Portsmouth an appropriation to carry out the purposes of this article, which appropriation shall be one-fourth of one per centum of the total payroll of those included under the jurisdiction and scope of the civil service provisions of this article; provided, however, that if the city council shall make an appropriation for the support of said commission equal to more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. (1970, c. 471)

§ 11.04. Rooms, Office Supplies, etc., for Commission.

The city council shall provide the commission with suitable and convenient rooms and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons coming within the purview of the civil service provisions of this article, and the failure upon the part of the city council to do so shall be considered a violation of the civil service provisions of this article and shall be punishable as such. (1970, c. 471)

§ 11.05. Civil Suits.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the civil service provisions of this article and of the rules of the commission. The commission shall be represented in such suits by the city attorney of the city of Portsmouth; but in any case of controversy with the city administration of the said city, it shall be represented by the Commonwealth's Attorney

of the said city of Portsmouth, but said commission may in any case be represented by special counsel employed by it. (1970, c. 471)

§ 11.06. Compensation for Commission Members.

The city council of the city of Portsmouth may hereafter, if and when it deems that the work of the civil service commission warrants it, fix the salary or compensation to be paid the members of the said commission, and provide for the method of its payment, and the said council shall make any necessary provisions for carrying out the intent and purposes of this article. (1970, c. 471).

§ 11.07. Legislation to Put Commission into Effect.

The city council shall enact appropriate legislation to implement this article, and the failure upon the part of the city council so to do shall be considered a violation of the civil service provisions of this article and be punishable as such. (1970, c. 471)

§ 11.08. Administration of Civil Service.

The classified civil service provisions of this article shall include all firefighters and policemen employed on a regular full-time basis by the police and fire departments and all other employees of the city who may come within the purview of this article as hereinafter provided, but shall not include the chief or deputy chief of the police or fire departments or the head or assistant head of any other department. However, if a member of the police department or fire department is appointed as chief or deputy chief of that department and is afterwards removed from such position, he shall be reinstated to his former position in the department for which he has qualified under the civil service regulations, provided he is not subject to dismissal under any of the provisions of § 11.12 of this article. All appointments to and promotions in said departments shall be made solely on merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation. (1970, c. 471)

§ 11.09. Adoption and Induction of Incumbents.

All persons holding a position in the police or fire departments, not including the chiefs and deputy chiefs thereof, when this article takes effect, who shall have served in such position for a period of at least one year last past continuously are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. (1970, c. 471)

§ 11.10. Appointments to Vacant Positions.

(a) Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the names and addresses of persons eligible for appointment thereto. The commission shall certify the names on the eligibility list for the class to which the vacant position has been allocated who are willing to accept employment. The appointing power shall forthwith appoint such a person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the names of the persons eligible for appointment to the appointing power, and said appointing power shall forthwith appoint a person so

certified to said position. No person so certified shall be laid off, removed, discharged, suspended or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing and after an opportunity to be heard by the commission and then only with its consent and approval, as provided in this article.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of not more than one year probationary service, as may be provided in the rules of the civil service commission, during which the appointing power may terminate the employment of the person certified to him, or it, if during the performance test thus afforded, upon observations or considerations of the performance of duty, the appointing power deems him unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate a person or persons so certified for such position and such person or persons shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. (1970, c. 471; 1974, c. 256; 1993, c. 913, 968)

§ 11.11. False Marking, etc., Prohibited.

No commissioner or any other person shall, by himself or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations of the civil service provisions of this article, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the civil service provisions of this article, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or impersonate any other person in connection with any examination or registration or application or request to be examined or registered. (1970, c. 471)

§ 11.12. Tenure of Office: Discharge.

The tenure of everyone holding office, place, position or employment under the civil service provisions of this article, shall be only during good behavior and efficient performance of duty. Any such person may be removed, discharged, suspended without pay, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

(a) Incompetent or inefficient performance of duty or inattention to or dereliction of duty;

(b) Insubordination, discourteous treatment of the public or a fellow employee or any other act of omission or commission of similar nature tending directly to discredit or injure the public service or to jeopardize the effective functioning of the service; or any willful violations of the provisions of this article or the rules and regulations to be adopted hereunder;

(c) Mental or physical unfitness for the position which the employee holds;

(d) Any conduct which is dishonest, deceitful, immoral or declared criminal by statute or common law, regardless of whether a criminal conviction is obtained;

(e) Drunkenness or use of intoxicating liquors, narcotics or any other dangerous drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of his position;

(f) Conviction of a felony, or a misdemeanor involving moral turpitude, or a pattern of misconduct as manifested by a series of convictions of misdemeanors not involving moral turpitude;

(g) [Repealed.]

(h) Failure to report to an appropriate superior authority administrative errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of misconduct or negligence of which the employee has knowledge;

(i) Failure of a supervisory employee or commanding officer to take appropriate corrective action with regard to such employees under his supervision or command as may be guilty of any form of neglect of duty or misconduct where the supervisor or commanding officer knows or should have known of such derelictions;

(j) Failure to achieve professional progress and advancement in accordance with reasonable and definitive criteria established by the civil service commission and set forth in its rules and regulations; provided, however, that such failure must be a personal failure of the employee and not one directly caused by conditions beyond the control of the employee; provided, further, that no person shall be disciplined under this rule unless and until he is given adequate written notice of his deficiencies and a reasonable time to correct them. (1970, c. 471; 1974, c. 256; 1975, c. 278);

§ 11.13. Disciplinary Procedure.

(a) No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this article, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, within forty-eight hours from the time of his removal, suspension, demotion or discharge, and a duplicate thereof filed with the commission at the same time. Any person so removed, suspended, demoted or discharged may, within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political, religious, racial or other unlawfully discriminatory reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, suspension, demotion or discharge, or, if it shall find that the removal, suspension, demotion or discharge was made for political, religious, racial or other unlawfully discriminatory reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or

discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade or pay; the commission may direct a lesser penalty than that given, but not a greater; the findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

(b) If the appointing power fails to properly notify the accused or the commission of the removal, suspension, demotion or discharge of a person permanently appointed or inducted into civil service within forty-eight hours from the time the removal, suspension, demotion or discharge was made, the commission shall set a date, within fifteen days, for a hearing of the accused person and approve or disapprove the action taken by the appointing power, and so notify the appointing power and the accused, as provided above.

(c) If for good and sufficient reason any member or members of the commission, the accused, or the appointing power should be prevented from attending the hearing on the date set by the commission, the commission may in its discretion adjourn the hearing to a later date, but said date must be set at the time of adjournment, and must be within the next ensuing fifteen days, unless it is duly shown to the commission, that it will be impossible to hold the hearing within said fifteen days, in which event the commission shall set the time for the hearing at the earliest possible date.

(d) All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense.

(e) If such order of removal, suspension, demotion or discharge be concurred in by the commission or a majority thereof, the person so removed, suspended, demoted or discharged shall have the right to appeal therefrom to the circuit court of the city of Portsmouth, Virginia. Such appeal shall be taken by serving the commission, within thirty days after the entry of such order of judgment, a notice of appeal, stating the grounds thereof and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such order or judgment be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The circuit court shall thereupon proceed to hear and determine such appeal in a summary manner and may confirm, modify or reverse the order of the commission; provided, however, that such hearing shall be confined to the determination of whether the order or judgment of removal, suspension, demotion or discharge made by the appointing power and concurred in by the commission was or was not made in good faith for cause, or was or was not for political, religious, racial or other unlawfully discriminatory reasons, and no appeal to such court shall be taken except upon such ground or grounds.

(f) No letter of reprimand, censure or admonition shall be made a part of the personnel record of a member of the civil service unless and until such letter has been authorized and signed by the member's department head and a copy thereof has been given to such member and another copy has been received by the civil service commission. This subsection shall not be construed as granting the subject member an appeal to the commission concerning such letter. No letter of reprimand, censure or

admonition shall remain a part of a member's personnel record for a period longer than two years from the date of said letter. (1970, c. 471; 1974, c. 256)

§ 11.14. Leave of Absence.

Leave of absence, without pay, may be granted by any appointing power to any person under civil service; provided, that such appointing power shall give notice of such leave to the commission. All temporary employment caused by leave of absence shall be made from the eligible list of classified civil service. (1970, c. 471)

§ 11.15. Political Services Disregarded and Prohibited; Other Discriminatory Actions Prohibited.

(a) No person holding any office, place, position or employment subject to civil service is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing to do so.

(b) No public officer whether elected or appointed shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or services, or any other valuable thing, for any political purpose.

(c) No person shall be appointed to or promoted to, suspended from, demoted, removed or discharged from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his race, color, religion, sex, national origin or political affiliations.

(d) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service. No recommendation for any person who applies for office or position in the classified service, or for examination under the provisions of this chapter, except, as to character, and, in the case of former employers, as to ability, shall be considered by the commission, director, or the appointing authority in giving any examination, appointment, promotion or reinstatement under this article.

(e) No person shall use, or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(f) No person in the classified service, and no member of the commission, shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting, or receive any such assessment, subscription or contribution. No person shall solicit any such assessment, subscription or contribution of any employee in the classified service.

(g) No person in the classified service, and no member of the commission, or the personnel director, should one be appointed, shall take any active part in the management of any political party or in any political campaign; provided, however, that nothing in this article shall construed to prohibit or prevent any such officer or employee from exercising his rights as a citizen privately to express his opinion or from enjoying entire

freedom from all interference in casting his vote, or from seeking or accepting election or appointment to public office. (1970, c. 471; 1974, c. 256)

§ 11.16. Creation of Employments and Compensations.

All offices, places, positions and employments coming within the purview of the civil service provisions of this article shall be created by the person or group of persons who, acting singly or in conjunction with others, is or are vested by law with power and authority to select, appoint or employ any person coming within the purview of this article and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. (1970, c. 471)

§ 11.17. Procedure in Order to Come Under Civil Service.

Upon petition in writing signed by ten percent of the employees or appointees of any department of the city of Portsmouth, with the exceptions hereinafter made, to the city council of the city of Portsmouth, requesting that their department be put under the civil service provisions of this article, it shall be the duty of the said city council to set a date for the hearing of the said petition, at which hearing the council shall consider the written petition, shall hear the verbal plea of the petitioners or their representative or representatives, shall hear the written or verbal opposition to the said plea, made by the city administration or its representative or representatives, or any citizen or citizens of the said city and shall, by resolution or ordinance, either reject the petition, or decree that on and after a certain day the said petitioning department shall come within the provisions of and be subject to and governed by the provisions of this civil service article and the rules and regulations of the civil service commission created hereby as fully and completely as if it had been originally included herein. (1970, c. 471)

§ 11.18. Officers and Employees Who Are Excluded.

The civil service provisions of this article shall not be extended to include the following officers, employees or other persons:

(a) Officers elected by the people and persons appointed to fill vacancies in such elective offices.

(b) The head or director of each department and his immediate assistant or deputy.

(c) The deputy or deputies or assistant or assistants, secretary or secretaries, clerk or clerks, appointed by an elective officer.

(d) The city manager and the members of his office staff.

(e) The city clerk and deputy city clerk.

(f) Officers or members of boards, or other persons, elected or appointed by the city council, under provisions of law.

(g) The city attorney and all employees of the Department of Law. (1970, c. 471)

§ 11.19. Definition of Terms.

As used in this article, the following mentioned terms shall have the following described meanings:

(a) The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three members of that commission.

(b) The term "appointing power" shall mean the city manager or other officer with appointing authority or his duly authorized representative.

(c) The term "appointment" includes all means of selecting, appointing or employing any person to hold any office, place, position, or employment in the civil service. (1970, c. 471)

§ 11.20. Penalties.

Any person who shall wilfully violate any of the civil service provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the city jail for not longer than one year, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in criminal matters shall have jurisdiction of all such offenses defined by this article. If such convicted person be in the classified service he shall be dismissed therefrom by the court, in addition to any penalty imposed hereunder. (1970, c. 471)

ARTICLE XII
Miscellaneous

§ 12.01. Present Ordinances and Rules and Regulations Continued in Effect.

All ordinances of the city and all rules, regulations and orders legally made by any department, board, commission or officer of the city, in force at the effective date of this charter, insofar as they or any portion thereof are not inconsistent herewith, shall remain in force until amended or repealed. (1970, c. 471)

§ 12.02. Severability.

If any provision of this charter or the applicability thereof to any person or circumstance is held invalid, the remainder of this charter and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby. (1970, c. 471)